No. 81 6970

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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SUPREME COURT, U.S.

JOHN BUGG, JR., Appellant

v.

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, LOCAL 507, AFL-CIO and KUNKLE VALVE COMPANY, INCORPORATED

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Counsel of Record

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QUESTIONS PRESENTED BY THE APPEAL

1. Whether the Appellant's claim regarding the March 3, 1975 transfer from the New Britain machine to Deburring was time barred, due to changes in the Indiana Statute (IC 22-9-1-12&IC 22-9-1-12.1), even though it was processed by the Equal Employment Opportunity Commission under 42 U.S.C. 2000 e-5(c).

2. If the Appellant's claims come under 42 U.S.C. 2000 e-5(e), shouldn't the timely filing be subject to waiver, estoppel, and equitable tolling.

3. If the Appellant has established a prima facie case of of discrimination against each of the Appellees.

4. If the Appellees' rebuttal of the evidence is a pretext.

5. If the Court's Rule 41(b) dismissal was appropriate.

6. If Pursuant to 28U.S.C. 61 or anyother applicable statute, the admission or the exclusion of evidence affected the substantial rights of the Appellant.

7. If the denial of relief for the Appellant against the Appellee-Union in charge number four is appropriate.

8. If the Appellant has been afforded the opportunity for discovery.

9. If the award of attorney's fees to both prevailing Appellees is appropriate.

10. If the Appellee-Company is liable to the Appellant for breach of the commitment to repay past wages as stated in the Fort Wayne Metropolitan Human Relations Commission's staff memorandum dated 10/19/76.

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TABLE OF AUTHORITIES

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OPINIONS BELOW

The opinion of the district court on remand is not reported. The opinion of the court of appeals remanding the case to the district court (Appendix A, infra, 1a-5a). The original opinion of the district court (Appendix B, infra, 6a-26a).

STATEMENT OF THE GROUNDS

This employment discrimination action, was brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq.. The date of the entry of the judgment is February 18, 1982. The notice of appeal was mailed to the United States Court of APpeals for the Seventh Circuit on May 17, 1982.

The Appellant believes that 28 U.S.C. 2101 confers jurisdiction on the appeal on the Supreme Court of the United States

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

28 U.S.C. 103

28 U.S.C. 61:

> No error in either the admission or the exclusion of evidnce and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

NATIONAL LABOR RELATIONS ACT

STATEMENT

Charges of Racial Discrimination in Employment were filed by the Appellant against the Appellees with the Fort Wayne Metropolitan Human Relations Commission; The Office of Federal Contract Compliance; The Equal Employment Opportunity Commission. Prior to trial in District Court the Appellee's raised the question of timely filing under 42 U.S.C. 2000e-5(c)(e) The District Court ruled that the charges were timely filed, (see Trial Court's Memorandum of Decision and Order, Appendix C, infra, 26a-30a).

The question of the Appellant establishing a Prima Facie case first arose during trial in the District Court through the Appellee's proposed findings of facts. The Trial Court ruled that the Appellant failed to show Prima Facie racial discrimination against either Appellee, (see Trial Court's Memorandum of Decision and Judgment Order, Appendix B, infra, 6a-26a).

If the Appellee's rebuttal of the evidence is a pretext, was first raised in the Appellant's Brief to the Appellate Court.

If the Trial Court's Rule 41 (b) dismissal of the Appellant's charges was appropriate, was first raised in the Appellant's Brief to the Appellate Court.

The question pertaining to the admission or the exclusion of evidence was first raised by the Appellant in his motions to the Appellate Court. The Appellate Court denied the motions.

If the denial of relief for the Appellant against the Appellee-Union in charge number four is appropriate, was first made through motions presented to the Trial Court, (see Trial Court's Memorandum of Decision and Order, Appendix C, infra, 26a-30a).

The question of whether the Appellant had been afforded the opportunity for discovery was first raised in Pre-Trial proceedings. The Trial Court found that the Appellees had complied with discovery.

If the award of attorney's fees to both prevailing Appellees is appropriate. The Trial Court considered the motions of both of the Appellees.

The Appellate Court has affirmed all of the Trial Court's decisions.

STATEMENT OF REASONS

Without a plenary consideration of the foregoing questions, the Civil Rights of the Appellant shall be violated. The Trial and Appellate Courts have erred.

The Supreme Court has stated, "Evidence that may be relevent to any showing of pretext includes.....Petitioner's general policy and practice with respect to minority employment. On the latter point, statistics as to Petitioner's employment policy and practice may be helpful to a determination .....to a general pattern of discrimination against blacks." See McDonnel Douglas Corporation v. Green, 411 U.S. 792. It must be remembered that only 3% of the employees in production for the Appellee-Company are black.

The conduct of the Appellee-Company amounted to a repudiation of the contractual procedures, Cf. Drake Bakeries, Inc. v. Local 50, Am. Bakers, etc., Worker, 370 U.S. 254, 260-263, 82 S.Ct. 1346, 1350-1352, 8 L. Ed. 2d 474. Testimony of Richard Mohan, Vice President, of the Appellee-Company during the trial indicates that no other employee has been placed into a "floating" classification. The Appellee-Union failed to supervise the grievances of the Appellant through the steps of the bargaining agreement's procedure. See Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967). Both Appellees ignored the contractual agreement concerning seniority. See California Brewers Association et. al., Petitioners v. Abram Bryant et al., 48 LW 4856.

The Appellant belongs to a racial minority; the Appellant applied and was qualified for the job for which the employer was seeking applicants; and, despite the Appellant's qualification, the Appellant was rejected; and, after the Appellant's rejection, the position remained open and the employer continued to seek applicants qualification. The Appellee has not produced evidence that the Appellant was rejected for a legitimate, nondiscriminatory reason. In fact the actions of the Appellee were in conflict with the terms of its contractual agreement. See Texas Department of Community Affairs, Petitioner, v. Joyce Ann Burdine, 49 LW 4214.

This appeal warrants plenary consideration by the United States Supreme Court for the reason that the court of appeals erred in denying the appellant's motions to correct, modify, supplement, and strike matter from the record. The original papers and exhibits filed in the district court may have been deleted in violation of Rule 10 of the Federal Rules of Appellate Procedure (see Trial Court's Order, Appendix E, infra 32a-33a).